IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 5751 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

1 to 5 No

M/S JAY KHODIYAR QUARRY WORKS THOR ITS PORP.MAHESHKUMAR

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 5751 of 2002

MR HM PRACHCHHAK for Petitioner No. 1

MR SUDDANSHU S PATEL APP for Respondent No. 1

..... for Respondent No. 2

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 06/09/2002

C.A.V. JUDGEMENT

1. This petition under Section 482 of the Code of Criminal Procedure ('the Cr.P.C.' for short) is filed to quash the process issued by the learned Judicial Magistrate, First Class (JMFC), Lathi, in Inquiry Case No.46 of 2002 by order dated 29.7.2002.

2. The original complainant and the respondent No.2 herein are officers of the Gujarat Pollution Control Board (GPCB) who have filed complaint against the petitioner for the offence of "forgery" punishable under Sections 465, 468 and 471 of the Indian Penal Code ('the IPC' for short). According to the complaint, the petitioner had submitted an application for consent dated 25.1.201 annexing therewith a previous order of consent which was a forged document. As described in detail in the complaint, the petitioner had applied for prior permission of the GPCB under Section 21 of the Air (Prevention and Control of Pollution) Act, 1981. That application No.26062 was rejected by order dated 25.11.1999 which was sent to the petitioner by registered post. And yet, the petitioner had straightaway made an application for renewal of the consent, as if consent was granted earlier, annexing a forged order of consent as genuine. Broadly on those allegations, the complaint was filed and below that the impugned order to investigate under Section 156 (3) of the Cr.P.C. was made.

3. Learned counsel Mr.Prachhak harped upon the irrelevant fact that subsequently regular consent was granted to the petitioner. Similarly, the fact that a show cause notice was issued by the GPCB and replied by the petitioner and the fact that the complaint was delayed by almost one-and-half years were emphasized. The learned counsel also sought to agitate the fact that the complainant was not examined by the Court before issuance of the process, but that argument was dropped after reading the express provisions of Section 200 of the Cr.P.C. The only argument elaborated on the basis of the judgment of this Court in SURESH KUMAR GUPTA v. STATE OF GUJARAT [1997 (2) GLH 356] was that the impugned order to investigate was not a reasoned order made after application of mind. Factually, the said order does disclose, though in short, the reason and the application of mind. As observed in the aforesaid judgment, before a Magistrate orders or directs investigation under Section 156 (3) of the Cr.P.C., he has to notionally decide that investigation through police agency is needed and the inquiry by himself may not be sufficient. When the necessary material to prove guilt can be produced before the Court with or without the help of the Court by the complainant and there is no

necessity to take assistance of investigating agency, recourse to police investigation can be avoided. However, if for the proof of guilt, it is felt necessary to go to the spot, to discover and seize some incriminating article, to search a place etc., then the direction to investigate stands justified.

4. Although in a different context, the Apex Court has recently observed, as under, in KANTI BHADRA SHAH v. STATE OF W.B. [2000 SCC (Cri.)303]:

> "12. If there is no legal requirement that the trial Court should write an order showing the reasons for framing a charge, why should the already burdened trial courts be further burdened with such an extra work. The time has reached to adopt all possible measures to expedite the court procedures and to chalk out measures to avert all roadblocks causing avoidable delays. If a Magistrate is to write detailed orders at different stages merely because the counsel would address arguments at all stages, the snail-paced progress of proceedings in trial courts would further be slowed down. We are coming across interlocutory orders of Magistrates and Sessions Judges running into several pages. we can appreciate if such a detailed order has been passed for culminating the proceedings before them. But it is quite unnecessary to write detailed orders at other stages, such as issuing process, remanding the accused to custody, framing of charges, passing over to next stages in the trial........"

5. The ratio of the judgment of this Court in SURESH KUMAR (supra), as under, has to be read in light of the above observations of the Supreme Court:

> "15. ......Every Magistrate shall record a short order disclosing the reason why he needs investigation under Section 156 (3) of the Code through police agency and is not able to try himself. In absence of any such reasons, the order to direct inquiry under Section 156 (3) should be treated as bad."

6. In the facts of the present case, the complainant being a statutory authority and there being allegations of serious offence, such as forgery, the learned Magistrate was fully justified in ordering investigation by police agency under the provisions of Section 156 (3)

of the Cr.P.C. and the impugned order does disclose the reasons and the application of mind. In such circumstances, no substance was found in the submissions made on behalf of the petitioner. Accordingly, the petition is summarily dismissed.

Sd/-

(D.H.Waghela,J.)

(KMG Thilake)

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